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**DEC 08 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Zhu et al. :  
Application No. 09/782,185 :  
Filed: February 12, 2001 :  
Attorney Docket No. LAM1P147/P0675 :  
DECISION ON  
PETITION

This is a decision on the "RENEWED PETITION TO REVIVE UNAVOIDABLY ABANDONED APPLICATION OR LAPSED PATENT (37 CFR 1.137(a))," filed July 22, 2004.

The petition under § 1.137(a) is **DISMISSED AS MOOT**.

The above-identified application became abandoned on February 8, 2004 for failure to timely pay the required issue fee within the statutory period of three (3) months from the mailing date, November 7, 2003, of the Notice of Allowance and Fee(s) Due.

A petition to revive unavoidably abandoned application or lapsed patent (37 CFR 1.137(a)) was filed on March 30, 2004. Therein, petitioner requests that in the event that the petition under § 1.137(a) is dismissed, the petition be treated as a "Petition to Revive for Patent Application Abandoned Unintentionally." By decision mailed May 24, 2004, the petition under § 1.137(a) was dismissed for failure to make an adequate showing of unavoidable delay. However, the alternative petition under § 1.137(b) was granted.

In view of the pending status of this application, the instant petition for revival is moot.

Petitioner is reminded that 35 U.S.C. 41(a) (7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

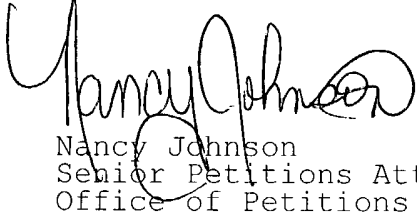
In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely

the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

Thus, having received consideration of the petition on the merits, as requested, under both § 1.137(a) and § 1.137(b), the fees under §§ 1.17(l) and (m) are required and will not be refunded.

The application is being forwarded to the Publishing Division for processing into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized flourish at the end.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions